Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

WEN-CHOUH LIN,

PETITIONER

VS.

ANITA C.S. LIN,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
the Supreme Court of North Carolina and
the North Carolina Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the trial court violated due process of law and the equal protection of the laws by ordering permanent alimony in 1991 before equitable distribution in 1997, while North Carolina law provides that equitable distribution should be decided first.

2. Whether Sixth Amendment right to counsel extends to civil proceedings that the court-appointed attorney in a contempt hearing would invoke personal jurisdiction over petitioner in the respondent's claim for equitable distribution.

3. Whether the trial court violated due process of law and the equal protection of the laws by ordering equitable distribution in 1997 after the judgment of absolute divorce in 1994, while North Carolina law provides that an absolute divorce shall destroy the right of a spouse to an equitable distribution.

4. Whether that the Court of Appeals and the Supreme Court of North Carolina dismissed petitioner's appeals was a mere device to prevent the review of the foregoing federal questions.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS, STATUES, AND RULE	1
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	20
CONCLUSION	23

INDEX TO APPENDICES

Appendix A	Judgment [for alimony]	1a
Appendix B	Summary Judgment of Absolute Divorce	7a
Appendix C	Order of Assignment of Counsel ...	10a
Appendix D	Order for Final Pretrial Hearing ..	12a
Appendix E	Order of Distribution of Marital Property	14a
Appendix F	Decision of the North Carolina Court of Appeals	21a
Appendix G	Order of the Supreme Court of North Carolina, April 2, 1998	27a
Appendix H	Order of the Supreme Court of North Carolina, July 22, 1999	29a
Appendix I	Certificate of Service	31a

TABLE OF AUTHORITIES

CASES	PAGE
Abie State Bank v. Bryan, 282 U.S. 765 (1931)	23
Batten v. N.C. Dept. of Correction, 326 N.C. 338, 389 S.E.2d 35 (1990)	18
Boulware v. Battaglia, 344 F.Supp. 889 (3rd Cir. 1973)	22
Capps v. Capps, 69 N.C. App. 755, 318 S.E. 2d 346 (1984)	9
Carter v. Carter, 102 N.C. App. 440, 402 S.E.2d 469 (1991)	15
Collins v. Collins, 18 N.C. App. 45, 196 S.E.2d 282 (1973)	10, 16
Edmon v. U.S, 520 U.S. 651 (1997)	21
Food Stores v. Board of Alcoholic Control, 268 N.C. 624, 151 S.E.2d 582 (1966)	18
Garrison v. Garrison, 90 N.C. App. 670, 369 S.E.2d 628 (1988)	14
Goodwin v. Zeydel, 96 N.C. App. 670, 387 S.E.2d 57 (1990)	15
Hatfield v. King, 184 U.S. 162 (1902)	22
Howell v. Howell, 321 N.C. 87, 361 S.E.2d 585 (1987)	passim
Johnson v. Amethyst Corp., 120 N.C. App 529, 463 S.E.2d 397 (1995)	12
Jolly v. Wright, 300 N.C. 83, 265 S.E.2d 135 (1980)	12
Lockamy v. Lockamy, 111 N.C. App. 260, 432 S.E.2d 176, (1993)	passim
Lutz v. Lutz, 101 N.C. App. 298, 399 S.E.2d 385, *cert. denied*, 328 N.C. 732, 404 S.E.2d 871 (1991)	15
Maxwell v. Bugbee, 250 U.S. 525, 541 (1919)	21
McCoy v. Shaw, 277 U.S. 302 (1928)	22

McIntosh v. McIntosh, 74 N.C. App. 554, 328 S.E. 2d 600 (1985) 9
McMillan v. Robeson County, 262 N.C. 413, 137 S.E.2d 105 (1964) 13
Michigan v. Long, 463 U.S. 1032 (1983) 23
Moore v. Pate, 112 N.C. App. 833, 437 S.E.2d 1 (1993) 10, 16
N.A.A.C.P. v. State of Alabama, 357 U.S. 449 (1958) 22
Ochoa v. Hernandez y Morales, 230 U.S. 139 (1913) 21
Pennoyer v. Neff, 95 U.S. 714, 733 (1877) 21
Pueblo of Santa Rosa v. Fall, 273 U.S. 315 (1927) 12, 22
Pulley v. Pulley, 255 N.C 423, 121 S.E.2d 876, aff'd, 256 N.C. 600, 124 S.E.2d 571, appeal dismissed by, 371 U.S. 22 (1961) 7, 15
Silva v. Vowell, 621 F.2d 640, 647 (5th Cir. 1980) *rehearing denied*, 625 F.2d 1016, *cert. denied*, 449 U.S. 1125 (1981) 21
Staub v. City of Baxley, 355 U.S. 313 (1958) 22
Talent v. Talent, 76 N.C. App. 545, 334 S.E.2d 256 (1985) ..... passim
Walker v. Sauvinet, 92 U.S. 90, 93 (1875) 21
Ward v. Board of County Com'rs of Love County, 253 U.S. 17 (1920) 23
Williams v. Williams, 46 N.C. App. 787, 266 S.E.2d 25 (1980) 12
Wolfe v. State of North Carolina, 364 U.S. 177(1960) 23

CONSTITUTIONS

U.S.Const. amend. VI 2, 22
U.S.Const. amend. XIV, § 1 ..... passim
N.C. Const. art. I, § 19 ..... passim

STATE STATUTES

N C. Gen. Stat. § 50-11(a), (e) ..... passim
N C. Gen. Stat. § 50-20 (1995) (b)(3), (c) ..... passim

RULE

14CDR-16.2 ..... passim

OTHER

1 *NC Index 4th*, § 33 at 566-65 20
19 *NC Index 4th*, § 477 at 266 22

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

WEN-CHOUH LIN,

PETITIONER

VS.

ANITA C.S. LIN,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

The Order of the Supreme Court of North Carolina denying review appears at Appendix H to the petition. The decision of the North Carolina Court of Appeals appears at Appendix F to the petition and is unpublished.

JURISDICTION

The date on which the Supreme Court of North Carolina decided my case was July 22, 1999. A copy of that order appears at Appendix H at 29a. The Chief Justice of this Court extended the time for me to file a petition for a writ of certiorari to and including November 23, 1999 in Application No. 99A275, October 4, 1999.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

1. The Constitution of the United States provides in part:

> Amendment VI. In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence.
>
> ....
>
> Amendment XIV, § 1. [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Section 19 of the Constitution of North Carolina, Article I provides in part:

> No person shall be ... deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws.

3. The General Statutes of North Carolina provide in part:

> § 50-11(a) After a judgment of divorce from the bonds of matrimony, all rights arising out of the marriage shall cease and determine ....
>
> ....
>
> (e) An absolute divorce obtained within this State shall destroy the right of a spouse to an equitable distribution of the property under G.S. 50-20 unless the right is asserted prior to judgment of absolute divorce ....
>
> ....
>
> § 50-20 (1995) (b)(3) ... No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitle to receive as vested

pension, retirement, or other deferred compensation benefits ....

(c) There shall be an equal division ... of marital property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property equitably.

4. Civil District Rules 14th Judicial District (14CDR) of North Carolina provide in part:

16.2 Unless a consent order for permanent alimony is filed or an extension of time is otherwise ordered by the presiding judge, the moving party in a case involving both equitable distribution and permanent alimony shall schedule the case for trial of the claim for permanent alimony through the Trial Court Administrator's Office within sixty (60) days after the resolution of the claim for equitable distribution.

STATEMENT OF THE CASE

In reply to my Complaint for Absolute Divorce, the respondent filed Answer and Counterclaim for equitable distribution, alimony pendente lite, and alimony on December 18, 1990. (Appendix A at 1a) The trial court ordered alimony pendente lite on February 6, 1991. (Appendix A at 2a) The trial court entered Judgment for permanent alimony and made said counterclaim for equitable distribution without prejudice on October 11, 1991. (Appendix A at 6a)

In a later case, File No. 94-CVD-2124, the respondent filed Complaint for Absolute Divorce and for Equitable Distribution. In Answer, I prayed the trial court to strike or deny her complaint for equitable distribution. Upon her

motion, the trial court entered Summary Judgment of Absolute Divorce on December 13, 1994, further ordering that equitable distribution should remain pending in this case. (Appendix B at 7a, 9a)

I had been on leave and out of town since the end of August 1996. (Appendix D at 12a, Appendix E at 16a) On January 13, 1997, I received a letter with a copy of Order of Final Pretrial Hearing from Mr. Harry L. Southerland, who was appointed by the trial court for me in a show cause brought by the respondent. (Appendix C at 10a-11a) I wrote to the Clerk of Superior Court to make sure that I represented myself on the record and for other papers.

Record shows that, on September 19, 1996, the respondent served, among other papers, her Motion for Equitable Distribution upon Mr. Southerland. (Appendix I at 31a) On December 20, 1996, Mr. Douglas Simons, Southerland & Simons, appeared at the pre-trial hearing and said that my counsel had not been able to contact me and that I did not desired to have further discovery. (Appendix D at 12a-13a) There was no notice for said hearing in the Record. The trial court entered, without appearances, Order of Distribution of Marital Property, awarding 55% of my retirement benefits to the respondent on January 8, 1997. (Appendix E at 14a, 17a) I appealed and assigned, among others, the following errors:

> 1. The court's Order of Distribution of Marital Property (Qualified Domestic Relations Order), on the ground that the court acted contrary to 14CDR-16.2 (1991); G.S. 50-20.
>
> Record pp. 7-9, 16-23, 112-120 [at 1a, 14a herein].
>
> 2. The court's Order of Distribution of Marital Property (Qualified Domestic Relations Order), on the ground that the court acted contrary to G.S. 50-11 et seq.

Record pp. 112-120 [at 14a-20a herein].

....

4. The last sentence of the first paragraph of the court's Order of Distribution of Marital Property (Qualified Domestic Relations Order) concerning "after hearing the evidence", on the ground that it is contrary to prima facie.

Record pp. 82, 112. [At 13a-14a herein]

....

10. That portion of the court's Findings of Fact No. 2 which provides that "this Court has both personal and subject matter jurisdiction of the action", on the ground that the court lacked them.

Record pp. 23, 112. [At 6a, 14a herein]

....

22. The court's Findings of Fact No. 9 et seq., Conclusion of Law No. 3 et seq. (p. 6-7) and Order Nos. 1-2, p. 7, on the ground that the court acted contrary to G.S. 50-20(b)(3) and 50-21(b).

Record pp. 116-118 [at 17a-19a herein].

23. That portion of Order No. 2 [sic], p. 8 of the court's Order of Distribution of Marital Property (Qualified Domestic Relations Order) concerning plaintiff's "sole and separate property", on the ground that the court acted contrary to G.S. 50-20(b)(3).

Record p. 119 [at 19a herein].

24. The court's Order of Distribution of Marital Property (Qualified Domestic Relations Order), on the ground that the court acted contrary to G.S. 1A-1, Rule 5(a); N.C. Const. art. I, sec. 19.

Record pp. 112-120 [at 14a-20a herein].

Record at 123-25. I raised "due process of law" and "the equal protection of the laws" in the first 5 arguments in the Brief of Plaintiff-Appellant as follows:

He respectfully shows the Court that Harry L. Southerland, Attorney, purported to be Counsel for Plaintiff/Appellant on R pp. 126, 128. Plaintiff did not and will not hire Mr. Southerland or anybody else in his firm to represent him. He represents himself. He prays that this Court will not be deceived by such an attempt. *See also* Argument V, i*nfra*.

ARGUMENT

I. THE TRIAL COURT ACTED CONTRARY TO G.S. 50-11.

Assignment of Error No. 2

(R pp. 112-20 [at 14a-20a herein])

.... In *Howell v. Howell*, 321 N.C. 87, 91, 361 S.E.2d 585, 588 (1987), the Supreme Court of North Carolina ruled:

> [P]ursuant to Ms. Howell's motion, the trial court ordered that she be given "relief from the effect of the divorce judgment ... to the extent of allowing her to assert a counterclaim against the plaintiff for equitable distribution...." ....
>
> .... These kinds of judicial rulings would negate the provisions of N.C.G.S. 50-11 by which the legislature has prescribed the legal effects of judgments of absolute divorce. These effects are beyond the power of a court to change.
>
> .... The only question before the trail court when this judgment was entered was whether to grant or not to grant the divorce.

The case at bar and *Howell v. Howell, supra*, are on all fours. The trial court acted contrary to said

Statute and the ruling of the Supreme Court of North Carolina by entering Order of Distribution of Marital Property (Qualified Domestic Relations Order) more than two (2) years after the absolute divorce. (App. p. 21-22, R pp. 112-20)

II. THE TRIAL COURT HAD NO JURISDICTION OVER THIS COUNTERCLAIM FOR EQUITABLE DISTRIBUTION.

Assignment of Error No. 10

(R p. 112 [at 14a herein])

As mentioned above, the said Summary Judgment of Absolute Divorce further ordered that the defendant's (plaintiff in that action) claim for equitable distribution remained pending in this case. .... However, in *Lockamy v. Lockamy*, 111 N.C. App. 260, 262, 432 S.E.2d 176, 177 (1993), this Court held:

> We note that in its order of absolute divorce, the trial court found that "all maters of ... Equitable Distribution of property are reserved for future disposition in separate pending action." However, no such separate pending action existed at the time of the judgment of divorce ... Jurisdiction over the subject matter cannot be conferred upon a court by consent, waiver or estoppel. *Pulley v. Pulley*, 255 N.C 423, 121 S.E.2d 876, aff'd, 256 N.C. 600, 124 S.E.2d 571, appeal dismissed by, 371 U.S. 22, 83 S.Ct. 120, 9 L.Ed.2d 96 (1961).

The case at bar and *Lockamy v. Lockamy*, *supra*, are on all fours. The trial court entered the Order of

Distribution of Marital Property on January 8, 1997 without jurisdiction. (R pp. 112-20)

III. THE TRIAL COURT ACTED CONTRARY TO ITS OWN RULES, G.S. 50-20(f), THE DECISIONS OF THIS COURT AND DUE PROCESS OF LAW WITH RESPECT TO EQUITABLE DISTRIBUTION AND ALIMONY.

Assignment of Error No. 1

(R pp. 7-9, 16-23, 112-20 [at 1a, 14a herein].)

....

Civil District Rules 14th Judicial District (14CDR) (1991) provides in pertinent part:

> 16.2 Unless a consent order for permanent alimony is filed or an extension of time is otherwise ordered by the presiding judge, the moving party in a case involving both equitable distribution and permanent alimony shall schedule the case for trial of the claim for permanent alimony through the Trial Court Administrator's Office within sixty (60) days after the resolution of the claim for equitable distribution.
>
> ....
>
> 20.1 Failure to comply with any section of these Rules shall subject an action to dismissal
>
> ....

Id. at 11, 13. (App. pp. 28-29) Furthermore, in *Talent v. Talent*, this Court instructed the lower court:

> We further instruct the court that on remand it should first determine an equitable distribution of the marital property and then

> determine whether appellant is entitled to alimony. When both permanent alimony and equitable distribution are requested as in this case, the equitable distribution should be decided first. *See Capps v. Capps*, 69 N.C. App. 755, 318 S.E. 2d 346 (1984); *see also McIntosh v. McIntosh*, 74 N.C. App. 554, 328 S.E. 2d 600 (1985). The court, in determining whether a party is entitled to alimony, must consider the estates of both parties. Until it is decided how the marital property is to be distributed, the parties' estates cannot definitely be determined.

76 N.C. App. 545, 556, 334 S.E.2d 256, 263 (1985). The case at bar and *Talent v. Talent*, *supra,* are on all fours. The trial court acted contrary to the said Rules, Statute, the decisions of this Court, N.C. Const. art. I, sec. 19 and U.S. Const. amend. XIV by entering said Order of Distribution of Marital Property (Qualified Domestic Relations Order) on January 8, 1997 after said Judgment for permanent alimony on October 11, 1991. (App. pp. 30-31)

IV. THE TRIAL COURT ACTED CONTRARY TO G.S. 1A-1, RULE 41 (a, c)

Assignment of Error No. 10

(R p. 23 [at 6a herein])

Order No. 5 of Judgment entered October 11, 1991 provided:

> There being no just cause for delay, the Court determines this to be a final adjudication upon Defendant's First Counterclaim for Alimony and Second Counterclaim for Alimony Pendente Lite, but is made without prejudice

> to Defendant's Third Counterclaim for Equitable Distribution.

Id. at 8. (R p. 23) In *Moore v. Pate*, 112 N.C. App. 833, 837, 437 S.E.2d 1, 3 (1993), disc. rev. denied 336 N.C. 73, 445 S.E.2d 35 (1994), the Court held:

> In fact, once a party takes a voluntary dismissal no valid order can be entered thereafter except as to collateral matters. *See Collins v. Collins*, 18 N.C. App. 45, 196 S.E.2d 282 (1973)

The trial court entered Order of Distribution of Marital Property on January 8, 1997. (R pp. 112-20) Therefore, the said Order is not valid. (App. p. 32)

V. THE TRIAL COURT WAS DECEIVED BY A SCHEME TO DEPRIVE PLAINTIFF OF PRO SE AND HIS PROPERTY WITHOUT DUE PROCESS OF LAW.

Assignments of Error Nos. 4, 24.

(R pp. 82, 112-20 [at 13a-20a herein])

Defendant knows that plaintiff has left Durham, North Carolina since the end of August 1996. (R pp. 81-82, 115) Record shows that the attorney for defendant, Roger S. Upchurch, served upon Harry L. Southerland, Attorney, among other papers, Motion for Equitable Distribution on September 19, 1996 ... that Douglas Simons appeared at a pre-trial hearing on December 20, 1996 .... Neither Mr. Southerland nor Mr. Simons appeared on January 8, 1997.

However, pursuant to G.S. 84-11, there was neither authority nor a letter signed by the plaintiff to hire Mr. Southerland or Mr. Simons to represent him in the defendant's counterclaim for equitable

> distribution. .... The said acts between Mr. Upchurch and Mr. Southerland revealed a scheme to deceive the trial court that Mr. Southerland represented plaintiff in the defendant's counterclaim for equitable distribution. Consequently, the trial court entered Order of Distribution of Marital Property on January 8, 1997. Plaintiff was deprived of his statutory and constitutional rights of self representation, and his property without due process of law. (R pp. 112-20, App. pp. 30-31, 34)

Id. at 4-9. The North Carolina Court of Appeals dismissed my appeal as an unpublished opinion. (Appendix F at 22a, 26a) I respectfully petitioned the Supreme Court of North Carolina for a discretionary review in conjunction with a Notice of Appeal and reiterated said constitutional questions as follows:

> [T]he Court of Appeals dismissed this case on the grounds that plaintiff's brief contained more than 65 characters per line .... Layman plaintiff was not aware of said interpretation and has obeyed. He respectfully prays this Court to forgive his typographic and harmless error.
>
> ....
>
> I. ....
>
> .... The trial court acted contrary to said Rule [i.e. 14CDR-16.2] and the decisions of [*Talent v. Talent*, etc., supra] the Court of Appeals in entering Judgment for permanent alimony on October 11, 1991 before Order of Distribution of Marital Property entered January 8, 1997 when both permanent alimony and equitable distribution were requested on December 18, 1990 ....

The decision of the Court of Appeals on this error in this case contradicted its prior decisions to deprive plaintiff of rights under N.C. Const. art. I, sec. 19 and U.S. Const. amend. XIV. A clear ruling from this Court would be significant to the jurisprudence of the State, to the public interest and to due process of law and equal protection of the laws because of numbers of divorcing couples every year.

II. ....

The Court of Appeals erroneously stated that defendant served on plaintiff's attorney a motion for equitable distribution on September 19, 1996. (Attachments, p. 2 [at 22a herein]) Record shows that the defendant served upon Harry L. Southerland, attorney, said Motion. (R pp. 56-57, 61 [at 31a herein]) Mr. Southerland was once appointed by the trial court for plaintiff in a contempt hearing. (R p. 43, Attachments, p. 7 [at 10a-11a herein]) Said Mr. Southerland's appearance in said contempt hearing would not invoke personal jurisdiction over the plaintiff since a contempt proceeding is a collateral matter that does not directly bear upon subject matter of the controversy. Williams v. Williams, 46 N.C. App. 787, 790, 266 S.E.2d 25, 28 (1980). There is neither statutory right nor a due process right to appointed counsel in civil cases except complexity of the case. Jolly v. Wright, 300 N.C. 83, 265 S.E.2d 135 (1980). Contrary to N.C.G.S. 84-11, Mr. Southerland appeared in the defendant's claim for equitable distribution without authority or a letter signed by the plaintiff in the Record. No person has the right to appear as another's attorney without the authority to do so, granted by the party for which he is appearing. Johnson v. Amethyst Corp., 120 N.C. App 529, 532, 463 S.E.2d 397, 400 (1995) (citing Pueblo

of Santa Rosa v. Fall, 273 U.S. 315, 319, 47 S.Ct. 361, 362, 71 L.Ed. 658 (1927)).

.... Record shows that plaintiff did not know anything from Motion for Equitable Distribution dated September 19, 1996 to Order of Distribution of Marital Property entered January 8, 1997 in time. (R pp. 81, 112, 115) The trial court entered said Order without appearance and proof of service. (R p. 112) Due process right of both the State and federal Constitutions require notice and an opportunity to be heard before a citizen may be deprived of his property. McMillan v. Robeson County, 262 N.C. 413, 417, 137 S.E.2d 105, 108 (1964) and cases there cited. The decision of the Court of Appeals on these errors in this case contradicted prior decisions of itself, this Court and the Supreme Court of the United States to deprive plaintiff of his retirement benefits contrary to statutory and constitutional rights under N.C.G.S. 1-11, N.C.G.S. 1-75.10 and 1-75.11, N.C. Const. art. I, sec. 19, U.S. Const. amend. XIV. Reaffirmation of the decisions and authority of this Court would be significant to the jurisprudence of the State, to public interest and to due process of law and equal protection of the laws as to the deprivation of a senior citizen's retirement benefits by an attorney without authorization.

III. ....

In a later case, File No. 94-CVD-2124, defendant (plaintiff in that action) obtained a Summary Judgment of Absolute Divorce on December 13, 1994, which judgment provided in pertinent part:

> IT IS FURTHER ORDERED AND DECREED that the Plaintiff's claim for equitable distribution shall survive the entry of

> this judgment, and shall remain pending for hearing upon its merits in this Court, in File No. 90-CVD-4498.

Id. at 3. .... N.C.G.S. 50-11 provides in pertinent part:

> (a) After a judgment of divorce from the bonds of matrimony, all rights arising out of the marriage shall cease and determine ....
>
> ....
>
> (e) An absolute divorce obtained within this State shall destroy the right of a spouse to an equitable distribution of the property under G.S. 50-20 unless the right is asserted prior to judgment of absolute divorce ....

Id. The effects of absolute divorce are beyond the power of a court to change. Howell v. Howell, 321 N.C. 87, 91, 361 S.E.2d 585, 588 (1987). .... Thus, the [trial] court had no power to further order equitable distribution.

In reviewing plaintiff's citation to Lockamy v. Lockamy, 111 N.C. App. 260, 432 S.E.2d 176 (1993), the Court of Appeals erroneously relied on Garrison v. Garrison, 90 N.C. App. 670, 369 S.E.2d 628 (1988) in that the only question therein was whether the superior court erred in ordering the property partitioned pursuant to G.S. 46.1 et seq. In this case, the defendant filed Motion for Equitable Distribution on the grounds of said further order, supra, if it were valid, on September 19, 1996. (R p. 56) Said Motion could not be pending at the time said Summary Judgment of Absolute Divorce was entered on

December 13, 1994. In Lockamy v. Lockamy, supra, the court held:

> The failure to specifically apply for equitable distribution prior to a judgment of absolute divorce will destroy the statutory right to equitable distribution. Howell v. Howell, 321 N.C. 87, 361 S.E.2d 585 (1987); Carter v. Carter, 102 N.C. App. 440, 402 S.E.2d 469 (1991); Lutz v. Lutz, 101 N.C. App. 298, 399 S.E.2d 385, cert. denied, 328 N.C. 732, 404 S.E.2d 871 (1991); Goodwin v. Zeydel, 96 N.C. App. 670, 387 S.E.2d 57 (1990).
>
> ....
>
> We note that in its order of absolute divorce, the trial court found that "all maters of ... Equitable Distribution of property are reserved for future disposition in separate pending action." However, no such separate pending action existed at the time of the judgment of divorce ... Jurisdiction over the subject matter cannot be conferred upon a court by consent, waiver or estoppel. Pulley v. Pulley, 255 N.C 423, 121 S.E.2d 876, aff'd, 256 N.C. 600, 124 S.E.2d 571, appeal dismissed by, 371 U.S. 22, 83 S.Ct. 120, 9 L.Ed.2d 96 (1961).

111 N.C. App. 260, 261-62, 432 S.E.2d 176, 177 (1993). The case at bar and Lockamy v. Lockamy, supra, are on all fours. The trial court entered Order of Distribution of Marital Property, awarding 55% of plaintiff's retirement benefits to the defendant on January 8, 1997 without subject matter jurisdiction.

Moreover, all divorce cases involving equitable distribution will be disposed of within one (1) year. 14CDR-6.1. (Appellant's Brief, App. p. 40) The trial court dismissed her counterclaim for equitable distribution without prejudice in the Judgment for permanent alimony entered October 11, 1991. G.S. 1A-1, Rule 41 (a)(2) and (c). (R p. 23) In Moore v. Pate, 112 N.C. App. 833, 837, 437 S.E.2d 1, 3 (1993), disc. rev. denied, 336 N.C. 73, 445 S.E.2d 35 (1994), the court held:

> In fact, once a party takes a voluntary dismissal no valid order can be entered thereafter except as to collateral matters. See Collins v. Collins, 18 N.C. App. 45, 196 S.E.2d 282 (1973)

The trial court erred in entering Order of Distribution of Marital Property on January 8, 1997 after said dismissal.

Based on the aforesaid reasons, the decision of the Court of Appeals on these errors in this case contradicted prior decisions of itself and this Court, and equal protection of the laws. Reaffirmation of the decisions and authority of this Court would be significant to the jurisprudence of the State, to public interest and to equal protection of the laws because of the volume of divorce cases every year.

Id. at 4-12. The Supreme Court of North Carolina dismissed my notice of appeal and denied me a discretionary review. I respectfully petitioned this Court for a writ of certiorari, No. 97-2008, in vain. I respectfully petitioned the Supreme Court of North Carolina and this Court for a writ of certiorari, No. 98-1659, on the ground that the North Carolina Court of

Appeals dismissed my appeal because of my brief containing approximately 99 characters per line. This Court denied me a writ of certiorari. I respectfully petitioned the Supreme Court of North Carolina to review the decision of North Carolina Court of Appeals, which addressed the distribution of my retirement plan and concluded my remaining assignments of error to be similarly without merit, as follows:

> Plaintiff is over 65 years old and looking forward to the decision of this Court on his retirement benefits. This case has dragged on for almost 10 years. No other adequate remedy is available to review a judgment like this one, which was entered contrary to law. He respectfully prays this Court to review the following issues:
>
> I. THE COURT OF APPEALS ERRED IN RELYING ON N.C.G.S. § 50-20(c) INSTEAD OF § 50-20(b)(3) REGARDING DISTRIBUTION OF RETIREMENT PLAN AND IN CONCLUDING PLAINTIFF'S REMAINING ASSIGNMENTS OF ERROR TO BE SIMILARLY WITHOUT MERIT.
>
> Argument IX of plaintiff's Brief reads:
>
> IX. THE TRIAL COURT ACTED CONTRARY TO G.S. 50-20(b)(3) IN DISTRIBUTING RETIREMENT BENIFITS.
>
> Assignments of Error Nos. 22-23
> (R pp. 116-18, 119 [at 17a-19a herein])
>
> N.C.G.S. 50-20(b)(3) provides in pertinent part:
>
> .... No award shall exceed fifty percent (50%) of the benefits the

> person against whom the award is made is entitled to receive as vested pension, retirement, or other deferred compensation benefits.
>
> Id. at 7-8. (R pp. 118-19) .... The trial court ... acted contrary to the said Statute by ordering fifty-five (55%) of the retirement benefits to the defendant.

Id. at 11-12. (Attachments, pp. 40-41) The Court of Appeals noted that plaintiff's retirement plan was the only identifiable marital property to be divided and decided that the controlling statute was N.C.G.S. § 50-20(c) (1995). (Attachments, pp. 2, 3 [at 22a, 23a herein]) Contrarily, in *Batten v. N.C. Dept of Correction*, this Court stated:

> When two statutes deal with common subject matter, one in "general and comprehensive terms" and the other "in a more minute and definitive way," they should be read together and harmonized, if possible, to effectuate consistent legislative policy. *Food Stores v. Board of Alcoholic Control*, 268 N.C. 624, 628-29, 151 S.E.2d 582, 586 (1966) (quoting 82 C.J.S. *Statutes* § 369 (1953)). "[B]ut, to the extent of any necessary repugnance between them, the special statute, or the one dealing with the common subject matter in a minute way, will prevail over the general statute ... unless it appears that the legislature intended to made the general act controlling." *Id.*

326 N.C. 338, 344, 389 S.E.2d 35, 39 (1990). Thus, regarding N.C.G.S. § 50-20(c) or § 50-20(b)(3), general or minute, the decision of the Court of Appeals was contrary to the decisions of this Court and shall be vacated. Obviously, the Court of Appeals was arbitrary to conclude that plaintiff's remaining assignments of error to be similarly without merit. (Attachments, p. 6 [at 26a herein])

II. BY MEANS OF MISAPPLICATION OF STATUTES, THE COURT OF APPEALS CONCLUDED PLAINTIFF'S REMAINING ASSIGNMENTS OF ERROR TO BE SIMILARLY WITHOUT MERIT AND THUS PREVENTED THIS COURT FROM REVIEWING DEPRIVATION OF HIS RETIREMENT BENEFITS WITHOUT DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAWS.

.... Consequently, the Court of Appeals avoided reviewing separately the questions that when both permanent alimony and equitable distribution are requested as in this case, the equitable distribution should be decided first. *Talent v. Talent*, 76 N.C. App. 545, 556, 334 S.E.2d 256, 263 (1985); that failure to specifically apply for equitable distribution prior to a judgment of absolute divorce, as in this case, will destroy the statutory right to equitable distribution. *Howell v. Howell*, 321 N.C. 87, 91, 361 S.E.2d 585, 588 (1987); and that plaintiff was deprived of retirement benefits without due process of law and the equal protection of the laws. And thus the Court of Appeals defeated the jurisdiction of this Court to review said questions, which affect every divorced and divorcing couple, and are controlled by due process of law and the equal protection of the

> laws in both Federal and State Constitutions. However, this Court may pass upon constitutional and public interest questions not reviewed below in the exercise of its supervisory jurisdiction, notwithstanding the appeal might be dismissed on procedural grounds. 1 *NC Index 4th*, § 33 at 566-65, and cases there cited.

Petition for Writ of Certiorari, No. 511P98-2 at 4-8. The Supreme Court of North Carolina denied my petition.

On the other hand, I petitioned for reviewing the Judgment for permanent alimony before equitable distribution and the further order in Summary Judgment of Absolute Divorce. The North Carolina Court of Appeals denied my petitions. I petitioned for reviewing said orders on August 15, 1999. The Supreme Court of North Carolina has not decided my petitions yet. See Application No. 99A275 in this Court.

REASONS FOR GRANTING THE WRIT

THE REAL ISSUE IS THAT THE NORTH CAROLINA COURT OF APPEALS NOT ONLY ERRED IN ADDRESSING THE DISTRIBUTION OF MY RETIREMENT PLAN BUT ALSO ARBITRARILY CONCLUDED MY REMAINING ASSIGNMENTS OF ERROR TO BE SIMILARLY WITHOUT MERIT. MOREOVER, THE SUPREME COURT OF NORTH CAROLINA DISMISSED MY APPEAL AND DENIED MY PETITIONS. NO OTHER ADEQUATE REMEDY IS AVAILABLE TO REVIEW JUDGMENTS LIKE THESE, WHICH WERE ENTERED CONTRARY TO LAW. THUS, THIS IS A MERE DEVICE TO PREVENT THIS COURT FROM REVIEWING THE DEPRIVATION

OF MY PROPERTY WITHOUT DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAWS.

Due process of law, when applied to judicial proceedings, means a course of legal proceedings pursuant to those rules and principles which have been established in our jurisprudence for the protection and enforcement of private rights. *Pennoyer v. Neff*, 95 U.S. 714, 733 (1877). "Due process of law ... in the States is regulated by the law of the state." *Walker v. Sauvinet*, 92 U.S. 90, 93 (1875). "Equal protection of the laws requires equal operation of the laws upon all persons in like circumstances." *Maxwell v. Bugbee*, 250 U.S. 525, 541 (1919). "A state violates the Equal Protection Clause when it irrationally treats differently those similarly situated." *Silva v. Vowell*, 621 F.2d 640, 647 (5th Cir. 1980) *rehearing denied*, 625 F.2d 1016, *cert. denied*, 449 U.S. 1125 (1981) The decisions below deprived me of rights under the "law of the land" and conflicted with the decisions of this Court in the cases, *supra* and the cases, *infra*.

The foregoing paragraphs, my latest petition to the Supreme Court of North Carolina, show that the decision of North Carolina Court of Appeals on my retirement plan also conflicted with the decision of *Edmon v. U.S* in that where specific statutory provision conflicts with general one, the specific governs. 520 U.S. 651, 657 (1997).

The real issue is that the North Carolina Court of Appeals excused itself from reviewing my remaining assignments of error. They show that the trial court erred in ordering permanent alimony before equitable distribution. (Contrary to settled usages and modes of procedure, the guaranty of due process of law inhibits the taking of one man's property and giving it to another. *Ochoa v. Hernandez y Morales*, 230 U.S. 139, 161 (1913).) They show that the trial court ordered equitable distribution without authorized appearance. ("No

person has the right to appear as another's attorney without the authority to do so, granted by the party for which he is appearing. " *Pueblo of Santa Rosa v. Fall*, 273 U.S. 315, 319, 47 S.Ct. 361, 362, 71 L.Ed. 658 (1927); A decree entered against persons not served with process, but for whom an unauthorized appearance has been entered by an attorney, will be reversed. *Hatfield v. King*, 184 U.S. 162 (1902); Sixth Amendment right to counsel does not extend to civil proceedings. *Boulware v. Battaglia*, 344 F.Supp. 889, 903 (3rd Cir. 1973).) They show that the trial court ordered equitable distribution after the judgment of absolute divorce, contrary to North Carolina law. See also my Petition for a Writ of Certiorari in this Court, No. 97-2008.

Moreover, the North Carolina Court of Appeals dismissed my appeal without an adequate ground. See my Petition for a Writ of Certiorari in this Court, No. 98-1659. In spite of its supervisory jurisdiction, the Supreme Court of North Carolina dismissed my Notice of Appeal (Constitutional Question) and denied my petitions. I am over 66 years old. This case has dragged on since 1990. No other adequate remedy is available to review judgments like these, which were entered contrary to law. 19 *NC Index 4th*, § 477 at 266, and cases there cited.

All in all, it is a mere device to prevent the review of a decision upon the federal question. *McCoy v. Shaw*, 277 US 302 (1928); and cases therein cited.

> It is settled that a state court may not avoid deciding federal questions and thus defeat the jurisdiction of this Court by putting forward nonfederal grounds of decision which are without any fair or substantial support. N.A.A.C.P. v. State of Alabama, 357 U.S. 449, 455, 78 S.Ct. 1163, 1168, 2 L.Ed.2d 1488; Staub v. City of Baxley, 355 U.S. 313, 318-320, 78 S.Ct. 277, 280, 281, 2 L.Ed.2d 302;

> Ward v. Board of County Com'rs of Love County, 253 U.S. 17, 22, 40 S.Ct. 419, 421, 64 L.Ed. 751.

Wolfe v. State of North Carolina, 364 U.S. 177, 185-86 (1960).

> It is, of course, "incumbent upon this Court ... to ascertain for itself ... whether the asserted non-federal ground independently and adequately supports the judgment." *Abie State Bank v. Bryan*, 282 U.S. 765, 773, 51 S.Ct. 252, 255, 75 L.Ed. 690 (1931).

Michigan v. Long, 463 U.S. 1032, 1039 (1983).

CONCLUSION

For the foregoing reasons in this petition, as well as in the petitions for a writ of certiorari, Nos. 97-2008 and 98-1659, certiorari should now be granted.

Respectfully submitted,

Wen-chouh Lin
1315 Morreene Road
Apartment 10-N
Durham, NC 27705
(919) 660-5902 (W)

APPENDIX A

NORTH CAROLINA DURHAM COUNTY	FILE NO. 90-CVD-04498 IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION
WEN-CHOUH LIN, Plaintiff vs. ANITA C. S. LIN, Defendant	JUDGMENT FILED OCT 15 1991

THIS CAUSE CAME ON TO BE HEARD, and was heard on July 30 and 31, 1991, by Richard G. Chaney, District Judge Presiding, without a jury, upon the trial and final determination Defendant's claim for alimony, set forth in the First Counterclaim of the Defendant.

APPEARANCES:

For counterclaimant (Defendant): Roger S. Upchurch, of Upchurch & Galifianakis, Durham.
For Plaintiff: John A. Bowman, of Maxwell & Hutson, Durham.

PROCEDURAL STATEMENT:

Plaintiff brought this action for absolute divorce upon the asserted statutory ground of one year of continuous separation. To Plaintiff's complaint, the Defendant filed Answer and Counterclaim, denying that the parties had been separated for one year, and asserting a First Counterclaim for Alimony, a Second Counterclaim for Alimony Pendente Lite and a Third Counterclaim for Equitable Distribution.

The Second Counterclaim, for Alimony Pendente Lite was heard by the undersigned Judge, who signed an Order for Alimony Pendente Lite on February 22, 1991, upon Findings of Fact and Conclusions of Law therein set out.

Both parties having waived a jury, the cause came before the Court for the trial and final determination of the First Counterclaim for Alimony, and for counsel fees.

Upon the evidence, the Court makes the following

FINDINGS OF FACT:

1. Both Plaintiff and Defendant are and have been citizens and residents of Durham County, State of North Carolina, for more than six months next preceding the commencement of this action.

2. Plaintiff and Defendant were lawfully married on April 4, 1964. Thereafter they lived together as husband and wife, and three (3) children were born of the marriage, all of said children being of full adult age and sui juris.

3. Plaintiff and Defendant began living in an apartment at 920 Lambeth Circle, Durham, N.C., in or about June, 1968. Thereafter, in August 1978, Plaintiff and Defendant, and their children, lived together in both apartments as one family.

4. Thereafter, in 1979, Plaintiff rented another apartment at 918 Lambeth Circle, and discontinued renting 922 Lambeth Circle. The evidence of both shows that Plaintiff and Defendant, and their children, thereafter lived together in both 918 and 920 Lambeth Circle as one family.

5. In May, 1979, Plaintiff decided that he could not get along with Defendant, and he did not sleep with Defendant after that date.

6. The Court finds that from May 1979 until September 1990, Plaintiff usually slept in 920 Lambeth Circle and Defendant usually slept in 918 Lambeth Circle; that these

apartments were immediately adjacent to each other in the same building, each opening into a common porch; that both Plaintiff and Defendant and their children had full and free access to both apartments, both day and night; that their children, and the Defendant, moved freely between the apartments, at times one or more of the children sleeping in #920 and at other times changing to #918; that from time to time throughout this period from 1979 to 1990, the Defendant did grocery shopping and cooked or otherwise provided meals, of some of which Plaintiff partook with Defendant and the children; Defendant frequently used the kitchen in the #920 apartment to do the cooking, and when there were family meals, they usually were eaten in #920; that Defendant did laundry for Plaintiff and Defendant and the children, using the washing machine located in #920; Plaintiff and Defendant had the same telephone number, and during much of the time they used the same mailbox. During said period, Plaintiff and Defendant entered into a joint business in 1979 which operated until 1986, and about which they conferred regularly and frequently during said period, and shred duties working in said business; that they had a joint checking account at least until 1983, and joint credit cards until about 1987; that Plaintiff and Defendant jointly entertained overnight house guests once or twice in the early 1980's and had meals with common acquaintances from time to time; that at all times from 1979 until the latter part of September, 1990, Plaintiff and Defendant lived in such manner that the prevailing perception of neighbors and acquaintances was that Plaintiff and Defendant were living together as husband and wife.

7. There was no separation of Plaintiff and Defendant until the latter part of the month of September 1990, at which time Plaintiff moved out of the apartment at 920 Lambeth Circle without the consent or acquiescence of Defendant and without provocation of fault on the part of Defendant, and

there was no sufficient justification, cause or excuse therefor; thereafter Plaintiff willfully failed and refused to provide Defendant with adequate subsistence according to his means and condition and according to Defendant's needs, and such conduct constituted and abandonment of Defendant by Plaintiff.

8. During the marriage of the parties, Defendant from time to time had jobs from which she earned money, but she never had sufficient earnings to support herself, and Plaintiff provided the major part of the funds for Defendant's maintenance and support, and Defendant was actually substantially dependent upon Plaintiff for her maintenance and support, and was dependent upon him at the time he abandoned her in the latter part of September 1990, and had substantial need of maintenance and support from him then and thereafter.

9. From April until June 1991, Defendant has been earning a net take-home pay of approximately $450.00 per month; she is in need of at least $1,000.00 per month for her recurrent reasonable living expenses; in addition she is indebted for cash loans made to her for living expenses, in excess of $3,000.00.

10. At the time of the trial of this cause, Plaintiff had a gross monthly income of $2,540.00 and, after taxes and other required deductions, he had a disposable monthly income of above $1,700.00; that the sum of $1,100.00 is reasonably necessary for his own living expenses, leaving at least $600.00 available from his current earnings for other applications.

11. Defendant is in need of support and maintenance from Plaintiff in the sum of $550.00 per month, which amount Plaintiff is reasonably able to pay.

12. Defendant's attorney, Roger S. Upchurch, has rendered valuable legal services to Defendant since February 7, 1991, the date covered by the Order for Alimony Pendente

Lite dated February 22, 1991; he is a experienced attorney and has spent at least 40 hours from February 7, 1991 to date in providing said service, which have included the preparation and trial of Defendant's counterclaim for alimony, and such services are reasonably worth the sum of $110.00 per hour, which rate does not exceed his customary hourly rates for such services, and does not exceed similar rates of charges made by experienced attorneys in the same community.

And upon the foregoing Findings of Fact, the Court draws the following

CONCLUSIONS OF LAW:

A. Plaintiff and Defendant lived together as husband and wife in the usually accepted sense form the time of their marriage in 1964 continuously until the latter part of the month September, 1990.

B. In the latter part of the month of September, 1990, Plaintiff without legal justification wilfully abandoned Defendant within the meaning and intent of G.S. 50-16.2, and thereafter wilfully failed and refused to provide Defendant with necessary subsistence in accordance with his means and the needs of Defendant; such abandonment took place without provocation or fault on the part of Defendant.

C. Plaintiff is a supporting spouse, and Defendant is a dependent spouse, within the meaning and intent of G.S. 50-16.1.

D. Defendant is entitled to judgment for alimony.

E. Defendant is entitled to an order for reasonable attorney fees to be paid by Plaintiff, in addition to those provided pendente lite in the Order dated February 22, 1991.

NOW, THEREFORE, UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS

ORDERED:

1. Plaintiff, Wen-Chouh Lin, shall pay to Defendant, Anita C.C. Lin, permanent alimony at the rate of $550.00 per month on or before the 5th day of each month hereafter, beginning the 5th day of September 1991.

2. Plaintiff shall pay to Roger S. Upchurch, attorney for Defendant, attorney fees in the sum of $4,400.00, covering legal services to Defendant from February 7, 1991 to date, to be paid $200.00 per month beginning November 1, 1991, and the first day of each month thereafter, until paid.

3. Plaintiff shall continue monthly payments for Defendant's attorney fees pendente lite provided for in the Order dated February 22, 1991, until the sums therein provided are fully paid.

4. Upon the effective date of the first payment for alimony provided for in this Judgment, the corresponding payments set fourth in the Order for Alimony Pendente Lite dated February 22, 1991 shall terminate.

5. There being no just cause for delay, the Court determines this to be a final adjudication upon Defendant's First Counterclaim for Alimony and Second Counterclaim for Alimony Pendente Lite, but is made without prejudice to Defendant's Third Counterclaim for Equitable Distribution.

Rendered in open court on July 31, 1991, and signed and entered this 11 day of October 1991.

s/ RG Chaney
RICHARD G. CHANEY
District Court Judge

APPENDIX B

NORTH CAROLINA DURHAM COUNTY	FILE NO. 94-CVD-2124 IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION
ANITA C. S. LIN, Plaintiff -vs- WEN-CHOUH LIN, Defendant	SUMMARY JUDGMENT 0F ABSOLUTE DIVORCE FILED DEC 13 1994

THIS CAUSE COMES ON TO BE HEARD before the undersigned Judge, upon Plaintiff's Motion for Summary Judgment under Rule 56, N.C. Rules of Civil Procedure and under authority of G.S. 50-10.

IT APPEARS that this is an action for absolute divorce under G.S. 50-6; that the Defendant has filed answer, pro se, to the complaint; that Defendant has been properly served with notice of hearing upon said Motion for Summary Judgment;

And it further appears to the Court from the verified complaint, the defendant's answer and admissions of record, the Plaintiff's and Defendant's affidavits and other records of this court, that there is no genuine issue s to any material fact to be tried by a jury, and that the moving party is entitled to have the Court find the facts and enter judgment as a matter of law under G.S. 50-10.

The Court therefore makes the following

FINDINGS OF FACT:

1. The Plaintiff has been a citizen and resident of the State of North Carolina for more than six months next preceding the commencement of this action.

2. The Plaintiff and the Defendant were lawfully married to each other as alleged in the Complaint.
3. The Plaintiff and the Defendant have lived continuously separate and apart from each other for more than one year next preceding the commencement of this action.

THE COURT FURTHER FINDS that three children were born of the marriage of the parties, all of whom are of full adult age and *sui juris*; that there is now pending in this Court a claim for alimony and support and for equitable distribution, to wit, No. 90-CVD-4498, in which action a judgment for alimony was signed and entered on 11 October 1991 by R.J. [sic] Chaney, Judge Presiding, which judgment also expressly was made without prejudice to Anita C.S. Lin's claim for equitable distribution; that the claim for equitable distribution should survive this judgment and remain pending on its merits in this Court, in File No. 909-CVD-4498.

And upon the foregoing Findings of Fact, the Court draws the following

ONCLUCSIONS OF LAW:

1. The Court has full jurisdiction of the parties and of the subject matter of this action, and full authority to find the facts and render judgment.

2. There is no genuine issue as to any material fact on the Plaintiff's claim for absolute divorce, and the Plaintiff is entitled to a summary judgment of absolute divorce from the Defendant under N.C.G.S. 50-6 and 50-10.

NOW THEREFORE, upon the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED, ADJUDGED AND DECREED:

That Summary Judgment is hereby granted; and the bonds of matrimony heretofore existing between the Plaintiff and the Defendant be and they are hereby forever dissolved, and the Plaintiff is hereby forever dissolved, and the Plaintiff is hereby granted an absolute divorce from the Defendant.

IT IS FURTHER ORDERED AND DECREED that the Plaintiff's claim for equitable distribution shall survive the entry of this judgment, and shall remain pending for hearing upon its merits in this Court, in File No. 90-CVD-4498.

This 13 day of December 1994.

s/ WY Manson
JUDGE PRESIDING
District Court, Fourteenth
Judicial District of North Carolina

APPENDIX C

STATE OF NORTH CAROLINA	File No. 90CVD04498
Durham County	In The General Court of Justice [x] District [ ] Superior Court Division

Defendant, Petitioner, Respondent Wen-Chouh Lin 816 Louise Circle Durham, NC 27705	**ORDER OF ASSIGNMENT OR DENIAL OF COUNSEL** FILED 96 FEB 15 G.S. 7A-450, 7A-451 (a)

Offense(s) (List Offense(s) Only If File No. Has Not Been Assigned)
Show cause- alimony and atty fees (temporary)

From the petition heard in this matter, it appears to the Court that the applicant named above is party to a proceeding or action listed in G.S. 7A-451 (a);

and, from the affidavit made by the applicant, and from the inquiry made by the Court, which is documented in the record, it is determined that the applicant;

[ ] is not likely to be imprisoned if he is convicted of the offense(s) for which he is charged; it is ORDERED that the defendant's petition is denied.

[ ] is not likely to be imprisoned if he is in contempt; it is ORDERED that the defendant's petition is denied.

[ ] is financially able to provide the necessary expenses of legal representation; it is ORDERED that the applicant is not an indigent and his petition is denied.

[x] is not financially able to provide the necessary expenses of legal representation; it is ORDERED that the applicant is an indigent and is entitled to the services of counsel as contemplated by law, and that he shall be represented by:

[x] the attorney named below. [ ] the public defender in this judicial district.

Name Of Appointed Attorney (If Applicable) Harry Southerland 315 E. Chapel Hill St. Suite 205 Durham, NC 27702 (919) 688-3491	Date 2-14-96 Signature s/ RG Chaney [x] Judge [ ] Clerk of Superior Court

APPENDIX D

NORTH CAROLINA	FILE NO. 90-CVD-04498
	IN THE GENERAL COURT
DURHAM COUNTY	OF JUSTICE
	DISTRICT COURT DIVISION
WEN-CHOUH LIN,	
Plaintiff	ORDER FOR FINAL
vs.	PRETRAI L HEARING
ANITA C. S. LIN,	
Defendant	FILED 1996 DEC 30

THIS CAUSE CAME ON TO BE HEARD upon the regular pre-trial calendar, on December 20, 1996, the Defendant Anita C.S. Lin having moved, through counsel, for equitable distribution.

APPEARANCES: For the Plaintiff Wen-chouh Lin: Harry L. Southerland, Durham; Douglas Simons appearing.

For the Defendant Anita C.S. Lin: Upchurch & Galifianakis, Durham; Roger S. Upchurch appearing.

IT APPEARS TO THE COURT from the statement of counsel that the Plaintiff Wen-chouh Lin has not responded to his counsel and that his counsel has not been able to contact the Plaintiff Wen-chouh Lin;

It further appears from the record that this court has previously found that the Plaintiff Wen-chouh Lin is grossly and willfully in arrears in payments of alimony and attorney fees ordered by this court, and is now in contempt of this court, as found in prior orders in this action; that he cannot be located by the sheriff of Durham County and that he has probably left the State of North Carolina with intent to avoid

service of process in this state, and with intent to defraud his creditors, including the Defendant Anita C.S. Lin.

THE COURT HAVING INQUIRED OF COUNSEL, and neither party desiring to have further discovery,

IT IS HEREBY ORDERED

1. That this cause is set for final pretrial hearing on equitable distribution for Monday, January 8, 1997 at 10:00 A.M.

2. That if the Plaintiff Wen-chouh Lin is not present for said hearing, the Court will be prepared at that time to consider entering a final order of equitable distribution.

Rendered in open court on December 20, 1996, and made and entered this 30 day of December 1996.

s/ RG Chaney
District Judge Presiding

APPENDIX E

NORTH CAROLINA	FILE NO. 90-CVD-04498 IN THE GENERAL COURT
DURHAM COUNTY	OF JUSTICE DISTRICT COURT DIVISION
WEN-CHOUH LIN, Plaintiff	ORDER OF DISTRIBUTION OF MARITAL PROPERTY
vs.	(QUALIFIED DOMESTIC
ANITA C. S. LIN, Defendant	RELATIONS ORDER) FILED JAN 8 1997 at 10:01 AM

THIS CAUSE CAME ON TO BE HEARD before the undersigned District Court Judge upon the wife C. S. Lin's Counterclaim for equitable Distribution of the marital property of the parties. The Court, after hearing the evidence and examining the record, makes the following

FINDINGS OF FACT:

1. The plaintiff and defendant were formerly husband and wife, having been married to each other on the 4th day of April, 1964; they separated in September 1990, deemed to be September 30, 1990, and divorced on the 13th day of December, 1994.

2. The plaintiff and the defendant have been residents of the State of North Carolina for a number of years, and this Court has both personal and subject matter jurisdiction of this action.

3. The Plaintiff-husband Wen-chouh Lin's Social Security number is 134-34-8076. His last known address in North Carolina was at 816 Louise Circle, Durham, North Carolina 27705.

4. The Defendant-wife Anita C.S. Lin's Social Security number is 558-74-1124. She currently maintains a residence in North Carolina at 918 Lambeth Circle, Durham, North Carolina 27705.

5. During the marriage of the parties, they acquired and accumulated the retirement benefits under the Duke University Faculty and Staff Retirement Plan which includes the major part of TIAA/CREF benefits described in detail below. Except for such retirement benefits, there are no other significant assets of the parties to be divided as marital property, and no identifiable marital liabilities to be divided.

6. The Court finds that an equal distribution of the marital property would not be equitable and that it would be equitable to distribute to Defendant-wife Anita C. S. Lin more than one-half of the marital property, for the following reasons:

6.1 The separation of the parties was brought about by the fault of the Plaintiff-husband Wen-chouh Lin who abandoned the Defendant-wife Anita C.S. Lin without adequate provocation in the latter part of September 1990 when the Defendant-wife entered the hospital for major surgery. The Plaintiff-husband Wen-chouh Lin thereafter willfully failed and refused to provide adequate support for Defendant-wife Anita C.S. Lin and a Judgment for alimony against Plaintiff-husband Wen-chouh Lin and in favor of Defendant-wife Anita C.S. Lin was entered herein on October 11, 1991 .

6.2 Defendant-wife Anita C.S. Lin was a faithful marital partner during the marriage and contributed at least her full share of time and effort, both directly and indirectly to the accumulation of the marital property through her services as spouse, mother of the children of the parties, homemaker and wage earner.

6.3 Defendant-wife Anita C.S. Lin has had serious medical and health problems that hampered her efforts to support herself since she was abandoned by the Plaintiff-husband Wen-chouh Lin in September 1990. She has had several jobs during said time of abandonment, but has never earned enough to support herself, and has found it necessary to borrow money for living expenses, causing her to incur debts of several thousands of dollars.

6.4 The Plaintiff-husband Wen-chouh Lin at all times since the entry of alimony judgment, until he took a leave of absence from his job in the latter part of 1996, had been fully and gainfully employed, with a disposable monthly income increasing from approximately $1,700.00 in 1991 to approximately $2,092.00 in February 1996. In spite of such earnings, he has been found in contempt of court several times for willful failure and refusal to comply with the Court's orders. At the time of this hearing, Plaintiff-husband Wen-chouh Lin was in contempt under order of the court, and as of Jan. 8, 1997 was in default in payments of alimony and attorney fees as shown by the Court's records in the amount of $21,835.57. A Judgment for Alimony Arrears against Plaintiff ... and in favor of the Defendant ... was entered in this action on October 22, 1996, in the amount of $9,869.57.

6.2 The Sheriff of Durham County has been unable to find the Plaintiff-husband Wen-chouh Lin for service of Orders to Show Cause in this Action. In attempting to locate the Plaintiff-husband Wen-chouh Lin for service of Orders to Show Cause, the Sheriff noted in his Return that the plaintiff's telephone was disconnected and that he had taken a leave of absence from his job at Duke University. He was located by telephone at one time in the State of Georgia. The Court finds that the Plaintiff-husband Wen-chouh Lin left the State of North Carolina

with intent to defraud his creditors, including the Defendant-wife Anita C.S. Lin.

7. Plaintiff-husband Wen-chouh Lin, hereinafter referred to as "plaintiff" or "participant", is presently employed by Duke University in Durham, North Carolina, as a librarian and is a participant in the Duke University Faculty and Staff Retirement Plan, which includes benefits through Teachers' Insurance and Annuity Association - College Retirement Equity Fund, hereinafter "TIAA/CREF", as follows:

(a) TIAA/CREF Retirement Annuities:
TIAA Contract No. A219858-6
CREF Certificate No. P137173-6

(b) TIAA/CREF Supplemental
Retirement Annuities:
TIAA Contract No. K164744-1
CREF Certificate No. J164744-3.

8. So much of the Plaintiff's benefits under the Duke University Faculty and Staff Retirement Plan as have accumulated from the marriage of the parties on April 4, 1964, until the deemed date of separation on September 30, 1990, are marital property pursuant to the provisions of N.C.G.S. § 50-20 et. seq., and pursuant to federal statute, North Carolina law and the provisions of the above retirement accounts. The Court may order to be transferred to the defendant under a Qualified Domestic Relations Order a portion of the assets of the above retirement accounts.

9. The Court finds the following division of the marital property to be equitable:

9.1 The Defendant-wife Anita C.S. Lin, as Alternate Payee, should receive, and the Plan Administrator should be authorized to take from these accounts, fifty-five percent (55%) of the current value of the above retirement accounts accumulated from April 4, 1964 until and including September 30, 1990.

9.2 The current value should reflect interim interest and divided earnings in TIAA and investment experience in CREF until the transfer is recorded by TIAA-CREF.

AND UPON THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING

CONCLUSION OF LAW:

1. There are no identifiable marital liabilities to be divided between the parties.

2. The only identifiable marital property to be divided between the parties are the benefits under the Duke University Faculty and Staff Retirement Plan in which the Plaintiff-husband Wen-chouh Lin is enrolled, consisting of TTAA and CREF accounts described in Findings of Fact Nos. 8 and 9 above.

3. The following division of the marital property will effect an equitable distribution of the marital property:

3.1 Defendant-wife Anita C.S. Lin, as Alternate Payee, is entitled to receive, from the TIAA and CREF accounts in which the Plaintiff-husband Wen-chouh Lin is the Participant, fifty-five percent (55%) of the current value of the TIAA/CREF retirement accounts accumulated from April 4, 1964, until and including September 30, 1990.

3.2 The current value should reflect interim interest and divided earnings in TIAA and investment experience in CREF until the transfer is recorded by TIAA-CREF.

3.3 All ownership and interest in the balance of the TIAA Annuities and the CREF Certificate, except that set aside as aforesaid for the Defendant-wife Anita C.S. Lin, should continue to belong to the Plaintiff-husband Wen-chouh Lin.

NOW, THEREFORE, IT IS CONSIDERED, ORDERED, ADJUDGED AND DECREED:

1. Defendant-wife Anita C.S. Lin shall have as her sole and separate property the following:

From the TIAA and CREF accounts in which the Plaintiff-husband Wen-chouh Lin is the Participant, Fifty-five percent (55%) of the current value of the TIAA/CREF retirement accounts accumulated from April 4, 1964, until and including September 30, 1990.

2. The current value should reflect interim interest and divided earnings in TIAA and investment experience in CREF until the transfer is recorded by TIAA-CREF.

CONCLUSION OF LAW

3. The accounts so awarded to Defendant-wife shall be immediately assigned and set aside in a new retirement account or accounts solely in the name of Anita C.S. Lin, the defendant, as Alternate Payee. All ownership rights in the account as so set aside, shall belong to Defendant-wife Anita C.S. Lin, including, if elected, death benefits to survivors.

2. Plaintiff-husband Wen-chouh Lin shall receive as his sole and separate property the following:

All ownership and interest in the balance of the TIAA Annuities and the CREF Certificate, other than that set aside as aforesaid for the Defendant-wife Anita C.S. Lin, shall continue to belong to the Plaintiff-husband Wen-chouh Lin.

The parties are directed to timely submit to TIAA-CREF all documents, including Releases that are required to finalize this order.

This Order:

a. Does not require any Plan to provide any type of form of benefit, or any option, not otherwise provided under the Plan.

b. does not require TIAA-CREF to provide increased benefits and

c. does not require the payment of benefits to an Alternate Payee under another Order previously determined to be a Qualified Domestic Relations Order.

5. This Order is intended to be a Qualified Domestic Relations Order (QDRO) and shall be entered and submitted to the Plan Administrator, embodying the appropriate provisions, consistent herewith, to authorize and direct the implementation of the equitable distribution of the retirement benefits.

6. This cause is retained by the Court for such other and further orders as may be proper and appropriate to implement this Order.

Rendered on Jan. 8, 1997, and signed and entered on Jan. 8, 1997.

s/ RG Chaney
DISTRICT COURT JUDGE
14TH JUDICIAL DISTRICT
OF N.C.

APPENDIX F

NO. COA97-339

NORTH CAROLINA COURT OF APPEALS

Filed: 3 February 1998

WEN-CHOUH LIN,
Plaintiff,

v.

ANITA C. S. LIN,
Defendant.

Durham County
No. 90 CVD 04498

Appeal by plaintiff from order entered 8 January 1997 by Judge Richard G. Chaney in Durham County District Court. Heard in the Court of Appeals 30 October 1997.

Wen-Chouh Lin, pro se, plaintiff-appellant.

Upchurch & Galifianakis, by Roger S. Upchurch, for defendant-appellee.

J0HN, Judge.

Plaintiff appeals the trial court's "Order of Distribution of Marital Property," contending, *inter alia*, that the court erred in determining that "an equal division of the marital property would not be equitable." We disagree.

Pertinent facts and procedural history are as follows: The parties were married 4 April 1964; on 13 November 1990, plaintiff filed a complaint for absolute divorce. Defendant's 18 December 1990 answer and counterclaim included a claim for equitable distribution. The parties were divorced 13 December 1994, the judgment providing that defendant's

equitable distribution claim would survive entry of the divorce decree and remain pending for hearing on the merits.

On 19 September 1996, defendant filed a motion seeking "order of equitable distribution," a copy of which was served on plaintiff's attorney that same date. In an 8 January 1997 order, the trial court divided the benefits under plaintiff's retirement plan, describing the benefits as "[t]he only identifiable marital property to be divided between the parties." Defendant was awarded "fifty-five percent (55%) of the current value [of the plan] accumulated from April 4, 1964, until and including September 30, 1990." Plaintiff filed timely notice of appeal.

At the outset, we observe plaintiff's appellate brief is in clear violation of N.C.R. App. P. 26(g) (Rule 26(g). In *Lewis v. Craven Regional Medical Ctr.*, 122 N.C. App. 143, 147, 468 S.E.2d 269, 273 (1996), this Court interpreted Rule 26(g) to require appellate briefs filed with this Court to be in a format allowing no more than ten characters per horizontal inch, or a maximum of 65 characters per line. Plaintiff's brief contains approximately 99 characters per line.

The appellate rules are mandatory and violation thereof subjects an appeal to dismissal. *Wiseman v. Wiseman*, 68 N.C. App. 252, 255, 314 S.E.2d 566, 567-68 (1984). Accordingly, plaintiff's appeal is hereby dismissed. Notwithstanding, in our discretion, *see* N.C.R. App. P. 2, we briefly address certain of plaintiff's contentions.

The second of plaintiff's fourteen arguments asserts the trial court lacked jurisdiction to enter its equitable distribution judgment. This contention is totally unfounded.

First, defendant asserted a counterclaim for equitable distribution in her answer to plaintiff's divorce complaint and thus properly preserved her right to equitable distribution pursuant to N.C.G.S. § 50-11 (e) (1995). Further, when the divorce was granted 13 December 1994, the trial court's judgment specified that defendant's equitable distribution

claim survived the entry of divorce and remained pending for hearing on the merits. Accordingly, the trial court did not lack jurisdiction to enter its equitable distribution judgment. *See Garrison v. Garrison*, 90 N.C. App. 670, 672, 369 S.E.2d 628, 629 (1988) (parties invoked jurisdiction of trial court by assertion of right to have marital property equitably distributed pursuant to G.S. § 50-20).

Plaintiff also vigorously maintains the trial court's determination that an equal division of the marital property would not be equitable was erroneous. The controlling statute is N.C.G.S. § 50-20 (1995), which provides in pertinent part:

> (c) There shall be an equal division ... of marital property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property equitably.

The statute subsequently lists 13 factors to be considered by the trial court in making its determination. Of particular import is G.S. § 50-20 (c) (12), which allows the court to consider "any other factor which the court finds to be just and proper."

Our General Assembly has thus accorded the trial court broad discretion in its decision regarding what shall constitute an "equitable" division of marital property, and our review is limited to the "clear abuse of discretion" standard which accords great deference to the trial court's discretionary rulings. *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). Indeed, we may not overturn such a ruling unless it is shown to have been "so arbitrary that it could lnot have been the result of a reasoned decision." *Id.*

In the order *sub judice*, the trial court provided

> that an equal distribution of the marital property would not be equitable and that it would be equitable to distribute to Defendant-wife Anita C. S. Lin more than one-half of the marital property,

and subsequently set out its reasons for so determining as follows:

> [1.] The separation of the parties was brought about by the fault of the Plaintiff ... who abandoned the Defendant ... without adequate provocation in the latter part of September 1990 when the Defendant ... entered the hospital for major surgery. The Plaintiff ... thereafter willfully failed and refused to provide adequate support for Defendant ... and a Judgment for alimony against [him] and in [her] favor ... was entered herein on October 11, 1991 .
>
> [2.] Defendant ... was a faithful marital partner during the marriage and contributed at least her full share of time and effort, both directly and indirectly to the accumulation of the marital property through her services as spouse, mother of the children of the parties, homemaker and wage earner.
>
> [3.] Defendant ... has had serious medical and health problems that hampered her efforts to support herself since she was abandoned by the Plaintiff .... She has had several jobs during said time of abandonment, but has never earned enough to support herself, and has found it necessary to borrow money for living expenses, causing her to incur debts of several thousands of dollars.
>
> [4.] The Plaintiff ... at all times since the entry of alimony judgment, until he took a leave of absence from his job in the latter part of 1996, had been fully and gainfully employed, with a disposable monthly

> income increasing from approximately $1,700.00 in 1991 to approximately $2,092.00 in February 1996. In spite of such earnings, he has been found in contempt of court several times for willful failure and refusal to comply with the Court's orders. At the time of this hearing, Plaintiff ... was in contempt under order of the court, and as of Jan. 8, 1997 was in default in payments of alimony and attorney fees as shown by the Court's records in the amount of $21,835.57. A Judgment for Alimony Arrears against Plaintiff ... and in favor of the Defendant ... was entered in this action on October 22, 1996, in the amount of $9,869.57.
>
> [5.] The Sheriff of Durham County has been unable to find the Plaintiff ... for service of Orders to Show Cause in this Action. In attempting to locate the Plaintiff ... the Sheriff noted in his Return that the plaintiff's telephone was disconnected and that he had taken a leave of absence from his job at Duke University. He was located by telephone at one time in the State of Georgia. The Court finds that the Plaintiff ... left the State of North Carolina with intent to defraud his creditors, including the Defendant. . . .

Succinctly stated, the record fails to show the court's ruling "could not have been the result of a reasoned decision." *Id.* The court's order contained the foregoing detailed factual findings supporting its conclusions, and those findings reflect the court's consideration, in accordance with G.S. § 50-20, of relevant statutory factors including:

> (1) The income, property, and liabilities of each party at the time the division of property is to become effective;
>
> . . .

(3) The duration of the marriage and the age and physical and mental health of both parties;

. . .

(5) The expectation of nonvested pension, retirement, or other deferred compensation rights, which is separate property;

(6) Any equitable claim to, interest in, or direct or indirect or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts of expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner of homemaker;

. . .

(12) Any other factor which the court finds to be just and proper.

G.S. § 50-20 (c). The trial court did not abuse its discretion.

In consideration of plaintiff's appearance *pro se*, we have also reviewed his remaining assignments of error and conclude them to be similarly without merit.

Appeal dismissed.

Judges LEWIS and SMITH concur.

Report per Rule 30 (e).

APPENDIX G

No. 76P98 FOURTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

WEN-CHOUH LIN	|	From NC Court of Appeals
v	|	(COA97-339)
ANITA C.S. LIN	|	From Durham
	|	(90CVD04498)

****

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by Plaintiff in this matter pursuant to G.S. 7A-30 (substantial constitutional question), the following order was entered and is hereby certified to the North Carolina Court of Appeals; the notice of appeal is

"Dismissed ex mero motu by order of the Court in conference, this the 2nd day of April 1998.

s/ Orr, J.
For the Court"

Upon consideration of the petition filed by Plaintiff in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 2nd day of April 1998.

s/ Orr, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 6th day of April 1998.

Christie Speir Cameron
Clerk, Supreme Court of
North Carolina
s/ Carol B. Templeton
Assistant Clerk

Copy to:
North Carolina Court of Appeals
Mr. Wen-Chouh Lin
Mr. Roger S. Upchurch, Attorney at Law,
For Anita C.S. Lin
Mr. Ralph A. White, Appellate Court Reporter
West Publishing Company
Mead Data Corporation
Shephard's McGraw-Hill

Seal of the Supreme Court
of North Carolina

APPENDIX H

No. 511P98-2 FOURTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

(Wen-Chouh Lin v Anita C.S. Lin)

WEN-CHOUH LIN

v

ANITA C.S. LIN

From NC Court of Appeals
(COA97-339)
From Durham
(90CVD04498)

****

ORDER

Upon consideration of the petition filed by Plaintiff in this matter for a writ of certiorari to review the order of the North Carolina Court of Appeals, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 22nd day of July 1999.

s/ Wainwright, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 26th day of July 1999.

s/ Christie Speir Cameron

Christie Speir Cameron
Clerk, Supreme Court of
North Carolina

Copy to:
North Carolina Court of Appeals
Mr. Wen-Chouh Lin, Pro Se, For Self
Mr. Nick Galifianakis, Attorney at Law,
For Anita C.S. Lin
Mr. Ralph A. White, Appellate Court Reporter
West Publishing Company
Lexis-Nexis

Seal of the Supreme Court of
the State of North Carolina

APPENDIX I

NORTH CAROLINA DURHAM COUNTY	FILE NO. 90-CVD-04498 IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION
WEN-CHOUH LIN, Plaintiff vs. ANITA C. S. LIN, Defendant	CERTIFICATE OF SERVICE FILED 96 SEP 20

I served the following papers upon the person named below by depositing a copy thereof in the U.S. Mail this date, postage prepaid, addressed as follows:

Harry L. Southerland
Attorney at Law
P.O. Box 1194
315 E. Chapel Hill St.
Durham NC 27702.

Papers served:

1. Motion for Equitable Distribution dated Sept. 19, 1996.
2. Motion for Temporary Restraining Order and for Temporary Injunction, dated September 19, 1996.
3. Motion for Garnishment & Wage Withholding, 9-19-96.
4. Order to Show Cause issued by Carolyn D. Johnson, J., dated August 16, 1996.
5. Order to Show Cause issued by R.G. Chaney, J., dated September 3, 1996.

6. Motion to Show Cause and Motion for Attorney Fees dated July 26, 1996, filed August 16, 1996.
7. Temporary Restraining Order signed by Judge Chaney, 9-19-1996.

This 19 day of September 1996.

s/ Roger S Upchurch